

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

AMYRIS, INC., *et al.*,

Debtors.

Chapter 11

Case Nos. 23-11131-TMH

Jointly Administered

Related to Doc. No. 601

**RESPONSE AND RESERVATION OF RIGHTS OF
THERMO FISHER SCIENTIFIC, INC. ENTITIES TO DEBTORS' NOTICE OF
POTENTIAL ASSUMPTION, ASSUMPTION AND ASSIGNMENT,
OR TRANSFER OF EXECUTORY CONTRACTS OR UNEXPIRED LEASES
AND PROPOSED CURE AMOUNT**

Thermo Fisher Scientific, Inc. and its divisions and subsidiaries (“Fisher”), by their undersigned attorneys, hereby file this limited response and reservation of rights (“Reservation of Rights”) to the Notice of Potential Assumption, Assumption and Assignment, or Transfer of Executory Contracts and Unexpired Leases (Doc. No. 601) (the “Assumption Notice”) and the proposed Cure Amount set forth therein. In support thereof, Fisher respectfully states as follows.

BACKGROUND

1. On August 9 and August 21, 2023 (as applicable, the “Petition Date”), the Debtors commenced these Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. Fisher and various entities of the Debtors are parties to certain agreements including confidentiality agreements (collectively the “TFS Agreements”).

3. On October 19, 2023, the Debtors filed the Assumption Notice seeking entry of a Bankruptcy Court order establishing the cure amount for certain executory contracts that may be assumed, assumed and assigned, or transferred via a future sale motion. (Doc. No. 601).

4. At this time, the Debtors have not determined whether Fisher's contracts will be assumed or assumed and assigned or otherwise transferred.

RESPONSE AND RESERVATION OF RIGHTS

5. It is not clear whether as a matter of law, confidentiality agreements constitute executory contracts that are subject to assumption and assignment under Section 365 of the Bankruptcy Code.

6. Accordingly, Fisher reserves its rights to object to any assumption, assumption or assignment, or transfer of the TFS Agreements on the basis that confidentiality agreements may not be assumed, assumed or assigned, or otherwise transferred pursuant to the Bankruptcy Code.

7. Next, the cure amounts set forth in the Assumption Notice are set at \$0. Fisher is currently unaware of whether there has been a breach of any of the TFS Agreements. Because the duty is on the Debtors to notify Fisher of any breach and Debtors have not provided any notification to Fisher of any such breach, Fisher cannot determine with certainty whether there has been a breach and the damages (and thus cure) for the breach.

8. Accordingly, Fisher reserves its rights to (i) determine whether there was a breach, (ii) to determine the appropriate cure amount, and, accordingly, (iii) to object to the amount of cure set forth in the Assumption Notice.

9. Nothing herein shall constitute a waiver or limitation of the Fisher's rights and remedies under the TFS Agreements or any other contract or agreement with any Debtor, including any right to payment for any amounts due thereunder.

10. Fisher reserves all rights to amend or supplement this Reservation of Rights and nothing contained herein, nor the exclusion of any argument from this Reservation of Rights, shall act as a waiver or otherwise preclude Fisher or its affiliates from objecting at the Sale Hearing with respect to any issues related to the TFS Agreements and/or to the assumption and assignment of any executory contract.

WHEREFORE, Thermo Fisher Scientific respectfully requests that its rights and reservations as set forth above be explicitly maintained and reserved in any order approving the Motion, and for such further relief as may be just and appropriate.

Dated: December 21, 2023
Wilmington, Delaware

Respectfully submitted,
HILLER LAW, LLC

/s/ Adam Hiller

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